

HOUSE BILL NO. 23

INTRODUCED BY B. WADDILL

A BILL FOR AN ACT ENTITLED: "AN ACT REDUCING THE SHORTFALL IN GENERAL FUND REVENUE BY INCREASING THE CIGARETTE TAX FROM 18 CENTS TO 68 CENTS ON A PACK OF CIGARETTES AND DEPOSITING THE AMOUNT FROM THE INCREASE IN THE TAX IN THE STATE GENERAL FUND; INCREASING THE TAX ON TOBACCO PRODUCTS FROM 12.5 PERCENT TO 50 PERCENT; AMENDING SECTIONS 16-11-111, 16-11-119, AND 16-11-202, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~48~~ 68 cents on each package containing 20 cigarettes, ~~and, when~~ Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the

1 quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in
2 this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and
3 delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a
4 federally recognized tribe or tribes of that reservation, must be given a ~~credit or~~ refund or credit. Once the quota
5 has been filled, the department shall immediately notify all affected wholesalers that further sales on that
6 reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the
7 quota period. Quota allocations are not transferable between quota periods or between reservations.

8 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the
9 refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on
10 the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation
11 at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs
12 or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."
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14 **Section 2.** Section 16-11-119, MCA, is amended to read:

15 **"16-11-119. Disposition of taxes.** Cigarette taxes collected under the provisions of 16-11-111 must
16 be allocated as follows:

17 (1) The amount of ~~44.44%~~ 2.94% of the cigarette tax collected on each package of cigarettes must be
18 deposited in the state special revenue fund to the credit of the department of public health and human services
19 for the operation and maintenance of state veterans' nursing homes.

20 (2) The amount of ~~73.04%~~ 92.86% must, in accordance with the provisions of 15-1-501, be deposited
21 in the state general fund.

22 (3) The amount of ~~45.85%~~ 4.20% must, in accordance with the provisions of 15-1-501, be deposited
23 in the long-range building program account provided for in 17-7-205."
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25 **Section 3.** Section 16-11-202, MCA, is amended to read:

26 **"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate**
27 **of tax.** (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the retail
28 consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other
29 person, the payment is considered as an advance payment and must be added to the price of tobacco products
30 and recovered from the ultimate consumer or user. Any person selling tobacco products at retail shall state or

1 separately display in the premises where the products are sold a notice of the tax included in the selling price
2 and charged or payable pursuant to this section. The provisions of this section do not affect the method of
3 collection of the tax as provided in this part.

4 (2) There must be collected and paid to the state of Montana a tax of ~~12-1/2%~~ 50% of the wholesale
5 price of all tobacco products to the wholesaler. Tobacco products shipped from Montana and destined for retail
6 sale and consumption outside the state are not subject to this tax."

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8 NEW SECTION. **Section 4. Notification to tribal governments.** The secretary of state shall send a
9 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
10 band of Chippewa.

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12 NEW SECTION. **Section 5. Effective date.** [This act] is effective October 1, 2002.

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14 NEW SECTION. **Section 6. Applicability.** [This act] applies to cigarettes and tobacco other than
15 cigarettes in the possession of wholesalers, distributors, and retailers on October 1, 2002.

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